Supreme Court, U.S.
FILED

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96 885 DEC 3 1996

No. OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1996

G. ANN SAATHOFF,
DAVID L. SMITH,

Petitioners,

v.

FILENET CORPORATION,

Respondent.

PETITION FOR A WRIT OF CERTIORARI

G. ANN SAATHOFF
9787 Holland Cir.
Westminster, CO 80021
(303) 420-0587

PRO SE PETITIONER

M. JULIA HOOK
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ATTORNEY FOR DAVID L. SMITH

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QUESTIONS PRESENTED FOR REVIEW

Whether the judges of the United States Court of Appeals for the Tenth Circuit and the United States District Court for the District of Colorado are so biased against Mr. Smith that a fair and impartial decision is impossible in this or any other case in which Mr. Smith is involved.

Whether because their impartiality might reasonably be questioned, the judges of the Tenth Circuit and the District Court were obligated to disqualify themselves from this case pursuant to 28 U.S.C. § 455(a).

Whether by failing or refusing to disqualify themselves from this case, the judges of the Tenth Circuit and the District Court deprived Ms Saathoff and Mr. Smith of their Fifth Amendment due process right to a fair and impartial decisionmaker.

Whether by depriving Ms. Saathoff and Mr. Smith of their Fifth Amendment due process right to a fair and impartial decisionmaker, the judges of the Tenth Circuit so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such departure by the District Court, as to call for the exercise of this Court's power of supervision.

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G. Ann Saathoff and David L. Smith hereby file their petition for a writ of certiorari:

OPINIONS BELOW

Order issued by the United States Court of Appeals for the Tenth Circuit on November 29, 1993 suspending Mr. Smith from the practice of law in the Tenth Circuit for failing to pay more than $50,000.00 in harsh and unjustified sanctions previously imposed against him by the Tenth Circuit and by the United States District Court for the District of Colorado.

Order issued by the Tenth Circuit on February 13, 1996 disbarring Mr. Smith from the practice of law in the Tenth Circuit based on his alleged violation of its (November 29, 1993) suspension order.

Order issued by the Tenth Circuit on February 16, 1996 affirming the order issued by the United States District Court for the District of Colorado on February 10, 1995 imposing "simultaneous and identical" discipline against Mr. Smith as that imposed against him by the Tenth Circuit in its (November 29, 1993) suspension order.

Order issued by the United States District Court for the District of Colorado on April 26, 1996 imposing "simultaneous and identical" discipline against Mr. Smith as that imposed against him by the Tenth Circuit in its (February 13, 1996) disbarment order.

Order issued by the United States District Court for the District of Colorado on May 2, 1996 admonishing and threatening Mr. Smith based on his alleged violation of its (February 10, 1995) suspension order.

Order and judgment issued by the Tenth Circuit on June 4, 1996 affirming the orders issued by the United States District Court for the District of Colorado dismissing Ms. Saathoff's civil rights case, removing Mr. Smith as Ms. Saathoff's attorney, and imposing attorney fees and costs of approximately $10,000.00, and other harsh and unjustified sanctions, against Ms. Saathoff and Mr. Smith.

Order and judgment issued by the Tenth Circuit on June 12, 1996 affirming the orders issued by the United States District Court for the District of Colorado imposing attorney fees and costs of approximately $25,000.00, and other harsh and unjustified sanctions, against Mr. Smith.

Order and judgment issued by the Tenth Circuit on June 12, 1996 affirming the orders issued by the United States District Court for the District of Colorado imposing attorney fees and costs of approximately $10,000.00, and other harsh and unjustified sanctions, against Mr. Smith.

Order and judgment issued by the Tenth Circuit on July 23, 1996 affirming the orders issued by the United States District Court for the District of

Colorado imposing attorney fees and costs of approximately $9,500.00, and other harsh and unjustified sanctions, against Mr. Smith.

Opinion issued by the Tenth Circuit on July 23, 1996 dismissing for lack of jurisdiction the appeal of the orders issued by the United States District Court for the District of Colorado imposing attorney fees and costs of approximately $9,000.00, and other harsh and unjustified sanctions, against Mr. Smith.

Order issued by the United States District Court for the District of Colorado on August 19, 1996 requiring Mr. Smith to pay the harsh and unjustified sanctions of approximately $25,000.00 previously imposed against him to the opposing party within ten days.

Order issued by the Tenth Circuit on September 4, 1996 denying Ms. Saathoff's and Mr. Smith's petition for rehearing and suggestion for rehearing en banc of its (June 4, 1996) order and judgment.

JURISDICTION

28 U.S.C. § 1254 is the statute believed to confer jurisdiction on the Supreme Court of the United States to review this case on certiorari.

CONSTITUTIONAL PROVISION AND STATUTE INVOLVED IN THE CASE

The Fifth Amendment to the Constitution of the United States provides:

> . . . [N]or shall any person be . . . deprived of life, liberty, or property, without due process of law. . . .

28 U.S.C. § 455(a) provides:

> Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

STATEMENT OF THE CASE

On November 29, 1993, the United States Court of Appeals for the Tenth Circuit issued its order suspending Mr. Smith from the practice of law in the Tenth Circuit for failing to pay more than $50,000.00 in harsh and unjustified sanctions previously imposed against him by the Tenth Circuit and by the United States District Court for the District of Colorado. See In re David L. Smith, 10 F.3d 723 (10th Cir. 1993), cert. denied, ____ U.S. ____, 115 S.Ct. 53, 130 L.Ed.2d 13 (1994). Mr. Smith may apply for readmission to the Tenth Circuit bar when he can demonstrate that each sanction order of the Tenth Circuit and the District Court has been satisfied. The

Tenth Circuit suspended Mr. Smith from the practice of law in the Tenth Circuit without giving him the evidentiary hearing required by Fed. R. App. P. 46, in blatant violation of his Fifth Amendment right to due process of law.

On February 13, 1996, the Tenth Circuit issued its order disbarring Mr. Smith from the practice of law in the Tenth Circuit based on his alleged violation of its (November 29, 1993) suspension order. See In re: David L. Smith, 76 F.3d 335 (10th Cir.), cert. denied, ____ U.S. ____, ____ S.Ct. ____, ____ L.Ed.2d ____ (1996). The Tenth Circuit disbarred Mr. Smith from the practice of law in the Tenth Circuit without giving him the evidentiary hearing required by Fed. R. App. P. 46, in blatant violation of his Fifth Amendment right to due process of law.

On February 16, 1996, the Tenth Circuit issued its order affirming the order issued by the United States District Court for the District of Colorado on February 10, 1995 imposing "simultaneous and identical" discipline against Mr. Smith as that imposed against him by the Tenth Circuit in its (November 29, 1993) suspension order. See In re Smith, 77 F.3d 493 (10th Cir.). Mr. Smith may apply for readmission to the District Court bar when he can demonstrate that each sanction order of the Tenth Circuit and the District Court has been satisfied. Mr. Smith's petition for a writ of certiorari contesting, on

Fifth Amendment due process grounds, the validity of the Tenth Circuit's (February 16, 1996) order is currently pending in this Court. See IN THE MATTER OF DAVID L. SMITH, No. 96-244 (filed on August 13, 1996).

On April 26, 1996, the United States District Court for the District of Colorado issued its order imposing "simultaneous and identical" discipline against Mr. Smith as that imposed against him by the Tenth Circuit in its (February 13, 1996) disbarment order. Mr. Smith's appeal contesting, on Fifth Amendment due process grounds, the validity of the District Court's (April 26, 1996) order is currently pending in the Tenth Circuit. See IN THE MATTER OF DISBARMENT OF DAVID L. SMITH, No. 96-1254 (filed on May 24, 1996).

On May 2, 1996, the United States District Court for the District of Colorado issued its order admonishing and threatening Mr. Smith based on his alleged violation of its (February 10, 1995) suspension order. Mr. Smith's appeal contesting, on Fifth Amendment due process grounds, the validity of the District Court's (May 2, 1996) order is currently pending in the Tenth Circuit. See IN THE MATTER OF DAVID L. SMITH, No. 96-1256 (filed on May 31, 1996).

On June 4, 1996, the Tenth Circuit issued its order and judgment affirming the orders issued by the United States District Court for the District of

Colorado dismissing Ms. Saathoff's civil rights case, removing Mr. Smith as Ms. Saathoff's attorney, and imposing attorney fees and costs of approximately $10,000.00, and other harsh and unjustified sanctions, against Ms. Saathoff and Mr. Smith. See Saathoff v. FileNet Corporation, No. 95-1206 (10th Cir.). The Tenth Circuit issued its order and judgment in Saathoff even though no grounds existed for dismissing Ms. Saathoff's civil rights case, removing Mr. Smith as Ms. Saathoff's attorney, or imposing attorney fees and costs of approximately $10,000.00, and other harsh and unjustified sanctions, against Ms. Saathoff and Mr. Smith.

On June 12, 1996, the Tenth Circuit issued its order and judgment affirming the orders issued by the United States District Court for the District of Colorado imposing attorney fees and costs of approximately $25,000.00, and other harsh and unjustified sanctions, against Mr. Smith. See Dunkin v. Louisiana-Pacific Corp., No. 95-1087 (10th Cir.), cert. denied, ____ U.S. ____, ____ S.Ct. ____, ____ L.Ed.2d ____ (1996). The Tenth Circuit issued its order and judgment in Dunkin even though no grounds existed for imposing attorneys fees and costs of approximately $25,000.00, and other harsh and unjustified sanctions, against Mr. Smith, and even though these sanctions had already been settled by the parties and their attorneys in a legally binding settlement agreement in which Mr. Smith had been released from payment of these sanctions to the opposing party as

a part of the consideration for the settlement of the underlying case.

Also on June 12, 1996, the Tenth Circuit issued its order and judgment affirming the orders issued by the United States District Court for the District of Colorado imposing attorney fees and costs of approximately $10,000.00, and other harsh and unjustified sanctions, against Mr. Smith. See DeHerrera v. City and County of Denver, et al., No. 95-1110 (10th Cir.). The Tenth Circuit issued its order and judgment in DeHerrera even though no grounds existed for imposing attorneys fees and costs of approximately $10,000.00, and other harsh and unjustified sanctions, against Mr. Smith, and even though these sanctions had already been settled by the parties and their attorneys in a legally binding settlement agreement in which Mr. Smith had been released from payment of these sanctions to the opposing party as a part of the consideration for the settlement of the underlying case. Mr. Smith's petition for a writ of certiorari contesting, on Fifth Amendment due process grounds, the validity of the Tenth Circuit's (June 12, 1996) order is currently pending in this Court. See Smith v. City and County of Denver, et al., No. 96-528 (filed on October 3, 1996).

On July 23, 1996, the Tenth Circuit issued its order and judgment affirming the orders issued by the United States District Court for the District of Colorado imposing attorney fees and costs

of approximately $9,500.00, and other harsh and unjustified sanctions, against Mr. Smith. See Qualls v. Regional Transportation District, et al., Nos. 95-1246, 95-1385, 95-1459 and 95-1489 (10th Cir.). The Tenth Circuit issued its order and judgment in Qualls even though no grounds existed for imposing attorneys fees and costs of approximately $9,500.00, and other harsh and unjustified sanctions, against Mr. Smith. Mr. Smith's petition for a writ of certiorari contesting, on Fifth Amendment due process grounds, the validity of the Tenth Circuit's (July 23, 1996) order is currently pending in this Court. See Smith v. Regional Transportation District, et al., No. 96-545 (filed on November 1, 1996).

Also on July 23, 1996, the Tenth Circuit issued its opinion dismissing for lack of jurisdiction the appeal of the orders issued by the United States District Court for the District of Colorado imposing attorney fees and costs of approximately $9,000.00, and other harsh and unjustified sanctions, against Mr. Smith. See Howard v. Mail-Well Envelope Company, et al., No. 95-1428 (10th Cir.), cert. denied, ____ U.S. ____, ____ S.Ct. ____, ____ L.Ed.2d ____ (1996). The Tenth Circuit issued its opinion in Howard even though no grounds existed for imposing attorneys fees and costs of approximately $9,000.00, and other harsh and unjustified sanctions, against Mr. Smith, and even though the Tenth Circuit had the authority to hear and decide the appeal pursuant to 28

U.S.C. §§ 1291, 1292(a)(1) and 1651(a), and Fed. R. App. P. 21.

On August 19, 1996, the United States District Court for the District of Colorado issued its order requiring Mr. Smith to pay the harsh and unjustified sanctions of approximately $25,000.00 previously imposed against him in Dunkin v. Louisiana-Pacific Corporation, et al. to the opposing party within ten days. The District Court issued its order and judgment in Dunkin even though no grounds existed for imposing attorneys fees and costs of approximately $25,000.00, and other harsh and unjustified sanctions, against Mr. Smith, and even though these sanctions had already been settled by the parties and their attorneys in a legally binding settlement agreement in which Mr. Smith had been released from payment of these sanctions to the opposing party as a part of the consideration for the settlement of the underlying case. Mr. Smith's appeal contesting, on Fifth Amendment due process grounds, the validity of the District Court's (August 19, 1996) order is currently pending in the Tenth Circuit. See Dunkin v. Louisiana-Pacific Corporation, et al., No. 96-1411 (filed on August 29, 1996).

On September 4, 1996, the Tenth Circuit issued its order denying Ms. Saathoff's and Mr. Smith's petition for rehearing and suggestion for rehearing en banc of its (June 4, 1996) order and judgment. Ms. Saathoff and Mr. Smith are filing their petition for a writ of certiorari in the Supreme Court within 90 days after the Tenth Circuit's (September 4, 1996) order.

ARGUMENT

As is apparent from the foregoing orders, judgments and opinions, which are set forth in the appendix to this petition for a writ of certiorari,[1] the judges of the United States Court of Appeals for the Tenth Circuit and the United States District Court for the District of Colorado are so biased against Mr. Smith that a fair and impartial decision is impossible in this or any other case in which Mr. Smith is involved. Because their impartiality might reasonably be questioned, the judges of the Tenth Circuit and the District Court were obligated to disqualify themselves from this case pursuant to 28 U.S.C. § 455(a). By failing or refusing to disqualify themselves from this case, the judges of the Tenth Circuit and the District Court deprived Ms. Saathoff and Mr. Smith of their Fifth Amendment due process right to a fair and impartial decisionmaker. See Arnett v. Kennedy, 416 U.S. 134, 197, 94 S.Ct. 1633, 40 L.Ed.2d 15 (1974) (White, J., concurring in part and dissenting in part) ("the right to an impartial decision-maker is required by due process" in every case); Morrissey v. Brewer, 408 U.S. 471, 485-86, 92 S.Ct. 2593, 33 L.Ed.2d 484 (1972)

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[1]Also set forth in the appendix is Ms. Saathoff's and Mr. Smith's petition for rehearing and suggestion for rehearing en banc of the Tenth Circuit's (June 4, 1996) order and judgment.

(decisionmaker bias is grounds for reversal); Mayberry v. Pennsylvania, 400 U.S. 455, 469, 91 S.Ct. 499, 27 L.Ed.2d 532 (1971) (Harlan, J., concurring) ("the appearance of evenhanded justice . . . is at the core of due process"); Goldberg v. Kelly, 397 U.S. 254, 271, 90 S.Ct. 1011, 25 L.Ed.2d 287 (1970) (decisionmaker bias is grounds for reversal); Offut v. United States, 348 U.S. 11, 75 S.Ct. 11, 99 L.Ed. 11 (1954) (nor may a judge or other ostensibly impartial decisionmaker "give vent to personal spleen or respond to a personal grievance" in reaching a decision).

CONCLUSION

By depriving Ms. Saathoff and Mr. Smith of their Fifth Amendment due process right to a fair and impartial decisionmaker, the judges of the United States Court of Appeals for the Tenth Circuit so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such departure by the United States District Court for the District of Colorado, as to call for the exercise of this Court's power of supervision. Ms. Saathoff and Mr. Smith therefore request this Court to grant their petition for a writ of certiorari,

and to grant such other and further relief as may be just under the circumstances.

Respectfully submitted,



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APPENDIX

Order issued by the United States Court of Appeals for the Tenth Circuit on November 29, 1993 suspending Mr. Smith from the practice of law in the Tenth Circuit for failing to pay more than $50,000.00 in harsh and unjustified sanctions previously imposed against him by the Tenth Circuit and by the United States District Court for the District of Colorado A-1

Order issued by the Tenth Circuit on February 13, 1996 disbarring Mr. Smith from the practice of law in the Tenth Circuit based on his alleged violation of its (November 29, 1993) suspension order A-4

Order issued by the Tenth Circuit on February 16, 1996 affirming the order issued by the United States District Court for the District of Colorado on February 10, 1995 imposing "simultaneous and identical" discipline against Mr. Smith as that imposed against him by the Tenth Circuit in its (November 29, 1993) suspension order A-8

Order issued by the United States District Court for the District of Colorado on April 26, 1996 imposing "simultaneous and identical" discipline against Mr. Smith as that imposed against him by the Tenth Circuit in its (February 13, 1996) disbarment order A-11

Order issued by the United States District Court for the District of Colorado on May 2, 1996 admonishing and threatening Mr. Smith based on his alleged violation of its (February 10, 1995) suspension order A-14

Order and judgment issued by the Tenth Circuit on June 4, 1996 affirming the orders issued by the United States District Court for the District of Colorado dismissing Ms. Saathoff's civil rights case, removing Mr. Smith as Ms. Saathoff's attorney, and imposing attorney fees and costs of approximately $10,000.00, and other harsh and unjustified sanctions, against Ms. Saathoff and Mr. Smith A-18

Order and judgment issued by the Tenth Circuit on June 12, 1996 affirming the orders issued by the United States District Court for the District of Colorado imposing attorney fees and costs of approximately $25,000.00, and other harsh and unjustified sanctions, against Mr. Smith A-25

Order and judgment issued by the Tenth Circuit on June 12, 1996 affirming the orders issued by the United States District Court for the District of Colorado imposing attorney fees and costs of approximately $10,000.00, and other harsh and unjustified sanctions, against Mr. Smith A-28

Ms. Saathoff's and Mr. Smith's (June 18, 1996) petition for rehearing and suggestion for rehearing en banc of the Tenth Circuit's (June 4, 1996) order and judgment A-31

Order and judgment issued by the Tenth Circuit on July 23, 1996 affirming the orders issued by the United States District Court for the District of Colorado imposing attorney fees and costs of approximately $9,500.00, and other harsh and unjustified sanctions, against Mr. Smith A-49

Opinion issued by the Tenth Circuit on July 23, 1996 dismissing for lack of jurisdiction the appeal of the orders issued by the United States District Court for the District of Colorado imposing attorney fees and costs of approximately $9,000.00, and other harsh and unjustified sanctions, against Mr. Smith A-53

Order issued by the United States District Court for the District of Colorado on August 19, 1996 requiring Mr. Smith to pay the harsh and unjustified sanctions of approximately $25,000.00 previously imposed against him in Dunkin v. Louisiana-Pacific Corporation, et al. to the opposing party within ten days A-64

Order issued by the Tenth Circuit on September 4, 1996 denying Ms. Saathoff's and Mr. Smith's (June 18, 1996) petition for rehearing and suggestion for rehearing en banc of its (June 4, 1996) order and judgment . . . A-66

United States Court of Appeals
for the Tenth Circuit

	)	[November 29, 1993]
In re:	)	
	)	No. 93-631
David L. Smith	)	
	)	

Order

Before Seymour, Chief Judge,
Baldock and Brorby, Circuit Judges

Respondent was ordered to show cause why he should not be fined, disbarred or otherwise disciplined for filing frivolous appeals in numbers 93-1070 and 93-1139, DeHerrera v. Denver, after the entry of this court's orders in Sandlin v. Canady (In re Canady), No. 92-1169 (10th Cir. April 27, 1993) and Dunkin v. Louisiana-Pacific Corp., Nos. 92-1230 & 92-1381 (10th Cir. February 11, 1993), cert. denied, 114 S.Ct. 87 (October 4, 1993)(No. 92-1994) and for filing a frivolous appeal in Casillan v. Regional Transportation District, Nos. 92-1009 & 92-1039 (10th Cir. January 15, 1993). Respondent maintains the appeals were not frivolous. We disagree.

The appeals were found to be frivolous by the panels who decided them.

We cannot overrule the judgment of another panel of this court. We are bound by the precedent of prior panels absent en banc reconsideration or a superseding contrary decision by the Supreme Court. United States v. Killion, No. 92-3130, 1993 WL 408150 (10th Cir. October 13, 1993); United States v. Spedalieri, 910 F.2d 707, 710 n. 3 (10th Cir. 1990) (a three-judge panel cannot overrule circuit precedent); United States v. Berryhill, 880 F.2d 275, 277 (10th Cir. 1989), cert. denied, 493 U.S. 1049 (1990).

Respondent filed a petition for certiorari in Dunkin. The question presented for review was,

> "Whether an order sanctioning counsel currently of record is immediately appealable under the collateral order exception rule established by this Court in Cohen v. Beneficial Indus. Loan Corp., 337 U.S. 541, 69 S.Ct. 1221, 93 L.Ed. 1528 (1949).
>
> Whether sanctions may be imposed against counsel for filing appeals warranted by existing law or by a good faith argument for the extension, modification or reversal of existing law."

Petition for certiorari, attached to appellant's motion to recall and stay the mandate filed July 12, 1993, in Dunkin v. Louisiana-Pacific Corp., Nos. 92-1230 & 92-1381 (10th Cir. February 11, 1993).

Certiorari was denied without comment. Dunkin and Smith v. Louisiana-Pacific Corp., ____ U.S. ____, 114 S.Ct. 87 (October 4, 1993)(No. 92-1994).

At oral argument, respondent admitted that he has not paid any of the sanctions that have been imposed on him by this court or the district court. David L. Smith is suspended from the practice of law before this court until all sanctions are paid. He may apply for reinstatement to our bar when he can demonstrate that each sanction order of this court or the district court has been satisfied.

The clerk shall provide a copy of this order to all courts before which Mr. Smith has been admitted to practice.

Entered for the Court
Per Curiam

United States Court of Appeals
for the Tenth Circuit

	)	[February 13, 1996]
In re:	)	
	)	No. 93-631
David L. Smith	)	
	)	

Order

Before Seymour, Chief Judge,
Baldock and Brorby, Circuit Judges

On December 14, 1995, this panel entered an order requiring respondent David L. Smith to show cause why he should not be disbarred for violating this court's November 1993 suspension order and for practicing in this court without authorization. On December 20, Mr. Smith filed his response. In ruling in this matter, the court has carefully reviewed that response, as well as the other pleadings filed to date in this disciplinary action. The court has determined that Mr. Smith's transgressions warrant disbarment.

Mr. Smith's name was referred for attorney discipline after more than one panel of this court determined he was filing frivolous appeals and failing to pay court ordered sanctions. Following

briefing and oral argument, this panel suspended Mr. Smith from practicing in the Tenth Circuit. In re Smith, 10 F.3d 723 (10th Cir. 1993)(per curiam), cert. denied, 115 S.Ct. 53 (1994). Approximately one year later, Mr. Smith filed a request for reinstatement. This panel denied that request. See Order Denying Reinstatement, No. 93-631, (10th Cir. July 18, 1995).

During the course of his suspension, Mr. Smith continued to file briefs in this court. In particular, the court has identified four appeals in which Mr. Smith appears to have drafted briefs on behalf of the allegedly pro se appellants. Those appeals are 94-1127, Qualls v. Regional Transportation District, 94-1130, Dunkin v. Louisiana-Pacific Corporation, 94-1317, Howard v. Mail-Well Envelope Company, and 95-1198, Seales v. Jefferson County School District R-1. The December 14 show cause order was the culmination of this court's efforts to have Mr. Smith explain his involvement in these appeals.

In his response, Mr. Smith readily admits, as he has before, that he wrote and submitted the briefs in this court following the issuance of our suspension order. He maintains, however, that those submissions are not in violation of this court's order because he signed two of the briefs in question and included footnotes admitting his involvement in the other two. He suggests that these admissions absolve him of any allegations of "ghost-writing." See Johnson v. Board

of County Commrs., 868 F. Supp. 1226, 1231-32 (D. Colo. 1994)(discussing elements of ghost-writing). The argument follows that because he admits his assistance, he cannot be subject to discipline. Mr. Smith's arguments misperceive the nature of the problem.

Mr. Smith was advised, in very clear terms, that he no longer had permission to practice law in this court. He was told he could not act as an attorney for his clients or former clients. In writing and filing briefs on behalf of otherwise pro se litigants, he violated that order. This breach existed regardless of whether he signed the briefs or inserted footnotes. Following the suspension order, Mr. Smith was prohibited from helping his clients with their briefs.

Contrary to assertions made in the response, the court has been very careful to distinguish between efforts made on behalf of clients and Mr. Smith's right to appeal sanctions issues on his own behalf. The briefs in the four cases identified asked for relief which went far beyond Mr. Smith as an individual. In 94-1127, for example, the alleged "pro se" brief requests relief in the form of reversing the district court's dismissal of certain claims and remand for an expedited jury trial on the merits. The front cover of that brief asserts it is being submitted by Mr. Qualls, not David Smith. We find it disingenuous for Mr. Smith to urge that these briefs only contained arguments personal to him.

Despite repeated warnings, Mr. Smith has chosen not to heed the orders of this court. He is, therefore, disbarred. His name will be stricken from the list of attorneys allowed to practice in this court. In addition, in accordance with Fed. R. App. P. 35(b), Mr. Smith's suggestion for hearing en banc was circulated to all judges of the court in regular active service. No member of the panel or the court has requested a poll. Therefore, the suggestion for en banc hearing is denied. The request for evidentiary hearing is likewise denied. Mr. Smith is referred to the office of the Circuit Executive to file any desired judicial misconduct complaint.

Entered for the Court
Per Curiam

United States Court of Appeals
for the Tenth Circuit

	)	[February 16, 1996]
	)	
IN THE MATTER OF	)	Nos. 95-1091 &
DAVID L. SMITH,	)	95-1119
	)	(D.C. No. 93-DP-28)
Attorney-	)	
Appellant.	)	(D. Colo.)

ORDER AND JUDGMENT[2]

Before Tacha, Logan, and Kelly,
Circuit Judges

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34(a); 10th Cir. R. 34.1.9. The case is therefore ordered submitted without oral argument.

[2]This order and judgment is not binding precedent, except under the doctrine of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

This appeal is from an order of the three-judge disciplinary panel of the United States District Court for the District of Colorado. Appellant Smith appeals pro se on numerous grounds relating to his suspension from the practice of law before this court and before the United States District Court for the District of Colorado. Appellant raises numerous grounds for his appeal relating to the application of local rules of the district court, the denial of due process in the procedures of that court and this court, and various allegations relating to the proceedings that resulted in suspension from the practice of law before the district court and this court.

This disciplinary matter has a long history in this court and in the district court. In November of 1993, a three-judge disciplinary panel of this court issued an order suspending appellant from the practice of law before the Tenth Circuit. In re Smith, 10 F.3d 723 (10th Cir. 1993) (per curiam), cert. denied, 115 S.Ct. 53 (1994). Following his suspension before the Tenth Circuit, the United States District Court for the District of Colorado conducted hearings, took evidence, and reviewed records related to the actions underlying the disciplinary proceedings. The arguments that Mr. Smith makes again on appeal are, in large measure, a renewed effort to bring before this court matters that were determined previously in the original disciplinary proceeding. Appellant further alleges on appeal that various

district court judges from the United States District Court in Colorado have imposed unjust and harsh sanctions against him. Finally, appellant urges that his counsel Mr. Figa, who has withdrawn from this case, failed to represent appellant competently in connection with all of the disciplinary actions. We find no merit in any of the arguments made on appeal. We approve the disciplinary order issued by the district court for substantially the reasons given in its post-hearing order. This court recently disbarred Mr. Smith for his failure to abide by previously entered orders. In re Smith, No. 93-631 (10th Cir. Feb. 13, 1996) (per curiam). Continued attempts by this appellant to further litigate matters already determined by this court or foreclosed by previous determinations could result in the imposition of sanctions. AFFIRMED.

The mandate shall issue forthwith.

ENTERED FOR THE COURT

Deanell Reece Tacha
Circuit Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Disciplinary Action [April 26, 1996]
No. 96-DP-4

IN THE MATTER OF THE DISBARMENT OF
DAVID L. SMITH

ORDER OF DISBARMENT

It appears that on February 13, 1996 the United States Court of Appeals for the Tenth Circuit disbarred DAVID L. SMITH from the practice of law in that Court effective February 13, 1996; it further appears that DAVID L. SMITH was admitted as a member of the Bar of the United States District Court for the District of Colorado on February 11, 1977 and that a Disciplinary Order entered in this Court on February 10, 1995 suspending DAVID L. SMITH. It further appears that on March 18, 1996, DAVID L. SMITH was notified by the Committee on Conduct by certified mail, return receipt, at his most current address on file with the Clerk of the Court of these proceedings. Pursuant to D.C.COLO.LR 83.6P., simultaneous and identical discipline will be imposed by the United States District Court for the District of Colorado nunc pro tunc from the date of judgment of the United States Court of Appeals for the Tenth Circuit. DAVID L. SMITH was given ten (10) days to file an answer should he desire to oppose or contest said recommendation. It further

appears that on March 20, 1996 DAVID L. SMITH filed an opposition to simultaneous and identical discipline. The Committee on Conduct has considered the response and recommends disbarment. The Court accepts the recommendation and it is therefore

ORDERED that pursuant to the Local Rules of Practice of this Court, DAVID L. SMITH is disbarred from the practice of law in this Court and his name shall be stricken from the roll of attorneys licensed to practice law in this Court. It is further

ORDERED that DAVID L. SMITH shall forward his certificate of admission to the Clerk of the Court within ten days from the date of this Order and that he shall in no way hold himself out as an attorney admitted to practice in this Court be it by use of letterhead, business cards, advertisement or in any other manner.

Dated at Denver, Colorado, this 26th day of April, 1996.

BY THE DISCIPLINARY PANEL
OF THE COURT:

ZITA L. WEINSHIENK, Judge

EDWARD W. NOTTINGHAM,
Judge

DANIEL B. SPARR, Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Disciplinary Action [May 2, 1996]
No. 95-CC-5

IN THE MATTER OF DAVID L. SMITH

ORDER

The Disciplinary Panel of the United States District Court for the District of Colorado (Disciplinary Panel) has considered the recommendation of the Committee on Conduct that the Disciplinary Panel issue an order to show cause why David L. Smith should not be held in contempt of the Court for practicing law in the United States District Court for the District of Colorado.

Mr. Smith was suspended from practicing in this District on February 10, 1995. On April 26, 1996, Mr. Smith was disbarred in this District.

At this time the Disciplinary Panel declines to issue an order to show cause. Mr. Smith is strongly admonished that he shall not practice law in this District whether in a case filed in the Court or removed from state to federal court, and that if he continues to practice law in this District, he may be cited for contempt of Court in an appropriate proceeding.

Dated at Denver, Colorado, this 2nd day of May, 1996.

BY THE DISCIPLINARY PANEL
OF THE COURT:

_____

ZITA L. WEINSHIENK, Judge

_____

EDWARD W. NOTTINGHAM,
Judge

_____

DANIEL B. SPARR, Judge

MAILING CERTIFICATE OF CLERK

True and correct copies of the Order dated May 2, 1996 were mailed by the clerk to the following:

David L. Smith
1630 Welton Street, Suite 300
Denver, CO 80202

Chief Judge Richard P. Matsch
Judge John L. Kane, Jr.
Judge Zita L. Weinshienk
Judge Lewis T. Babcock
Judge Edward W. Nottingham
Judge Daniel B. Sparr
Judge Wiley Y. Daniel
Bankruptcy Chief Judge Charles Matheson
Bankruptcy Judge Patricia A. Clark
Bankruptcy Judge Roland J. Brumbaugh
Bankruptcy Judge Sidney B. Brooks
Bankruptcy Judge Donald E. Cordova
Bankruptcy Judge Marcia S. Krieger
Magistrate Judge Donald Abram
Magistrate Judge Richard M. Borchers
Magistrate Judge Bruce D. Pringle
Magistrate Judge O. Edward Schlatter

Patrick Fisher, Clerk, U.S. Court of Appeals

Brad Bolton, Clerk, U.S. Bankruptcy Court

Committee on Conduct Members:
John M. Richilano, Chairman
John Purvis
Alden V. Hill
J. Nicholas McKeever, Jr.
Albert Wolf
William Lucero

Patricia A. Coan
J. Lawrence Hamil
Claudia J. Jordan
E. Gregory Martin
Frederick Y. Yu
Edward Lyons, Jr.

James P. Hollaway
Grievance Committee Counsel
600 17th Street, Suite 920 South
Denver, Colorado 80202

DATED: May 2, 1996

JAMES R. MANSPEAKER, Clerk

by _____
Deputy

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

G. ANN SAATHOFF,	)	[June 4, 1996]
Plaintiff-Appellant,	)	
v.	)	No. 95-1206
FILENET CORPORATION,	)	(D.C. No. 93-B-2396
Defendant-Appellee.	)	
DAVID L. SMITH,	)	
Attorney-Appellant.	)	

ORDER AND JUDGMENT[3]

Before ANDERSON, LOGAN, and MURPHY,
Circuit Judges

[3]This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34(a); 10th Cir. R. 34.1.9. The case is therefore ordered submitted without oral argument.

Plaintiff-appellant G. Ann Saathoff and attorney-appellant David L. Smith appeal from various rulings of the district court entered in the course of plaintiff's lawsuit against her former employer, FileNet Corporation. Specifically, appellants appeal from an order granting summary judgment to defendant, rulings resolving various discovery disputes, and the imposition of sanctions against Smith. Appellants also allege error in the district court's refusal to recuse, its removal of Smith as plaintiff's attorney, and its requirement that plaintiff post an appeal bond.

Plaintiff began work for FileNet in April 1990 as a senior field engineer answering to Michael Maziarz, as her immediate supervisor. She alleges that while working with Maziarz, she was subjected to several incidents of sexual harassment and was passed over for critical software training. Although her most recent employment evaluation rated her performance as up to the expected lever, her employment record reveals that she was also the frequent target of complaints by defendant's customers for various failings in her service.

As a result of a shortfall in revenue goals for the fourth quarter of 1992, FileNet decided to eliminate certain jobs and institute other cost-cutting measures. Plaintiff, the only senior field engineer and the only female in the Denver office, was among those whose job were terminated.

As part of the termination process and in return for an enhanced severance payment of $2,350.52, plaintiff signed a release and waiver of all claims, known and unknown, which she may have had against FileNet. Later, through her attorney, plaintiff attempted to rescind the release but refused to return the severance payment as demanded by FileNet.

Plaintiff then brought claims against FileNet for alleged violation of Title VII of the Civil Rights Act, 42 U.S.C. §§ 2000e-2000e(17), and 42 U.S.C. § 1981, as amended by the Civil Rights Act of 1991, 42 U.S.C. § 1981(a). In her complaint, she alleged that her termination was based on illegal gender discrimination arising out of her relationship with Maziarz, that she was the victim of retaliation because of her opposition to various illegal practices, and that she had also been retaliated against for exercising a work-related right under Colorado common law.

A large part of appellants' brief is devoted to contesting the imposition of monetary sanctions against attorney Smith and other disciplinary action imposed on him both by the Tenth Circuit and by the

District of Colorado. With regard to the monetary sanctions imposed by the district court in the course of this case, we have reviewed the record and find no abuse of discretion. See Willner v. University of Kan., 848 F.2d 1023, 1030 (10th Cir. 1988) (upholding sanction of dismissal for failure to provide discovery), cert. denied, 488 U.S. 1031 (1989). The additional disciplinary actions taken against Smith have been reaffirmed by this court in In re Smith, 76 F.3d 335, 336 (10th Cir. 1996), which effectively disposes of his arguments in that regard.

Turning to plaintiff's portion of the appeal, we note that plaintiff has not paid the $4,500 appeal bond ordered by the district court. Plaintiff is permitted to argue the propriety of the bond requirement without having first posted the bond. See Sckolnick v. Harlow, 820 F.2d 13, 15 (1st Cir. 1987) (affirming a bond requirement and allowing plaintiff until a date certain to post bond or risk dismissal). Plaintiff cannot prevail on this issue, however, because our review of the record reveals no abuse of discretion in the district court's action. See Westinghouse Credit Corp. v. Bader & Dufty, 627 F.2d 221, 224 (10th Cir. 1980).

Having determined that the bond requirement was appropriate but remains unpaid, our normal course would be to invoke 10th Cir. R. 42.1 to dismiss this appeal for want of prosecution unless

plaintiff cures the default within a definite time period. However, because this case has been fully briefed, we also have the option of reviewing the merits. See Perry v. Pogemiller, 16 F.3d 138, 140 n. 1 (7th Cir. 1993) (reaching the merits under similar circumstances).[4]

As noted above, the district court granted summary judgment in favor of defendant on all claims. Initially, plaintiff argues that the district court erred in denying or limiting discovery. The magistrate judge, after reviewing plaintiff's discovery requests, concluded that the requested materials were either irrelevant to plaintiff's case or confidential and subject to a protective order. Plaintiff has failed to establish the relevance of the disputed documents,

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[4]We note that appellants' brief was filed during the time Smith was under suspension by this court and prohibited from filing briefs on behalf of clients. See In re Smith, 10 F.3d 723, 724 (10th Cir. 1993), cert. denied, 115 S.Ct. 53 (1994). The brief is signed by both appellants although it is clear that Smith wrote the brief. While it would be within our authority to dismiss this appeal because of Smith's participation in the preparation of the brief, in the interest of judicial economy we will interpret plaintiff's signature on the brief as her attempt to appear in this court in a pro se capacity and proceed to address the merits.

and she and her attorney refused to sign a protective order other than a simple statement insufficient to protect defendant's interests.

We have reviewed the protective order proposed by defendant and agree with the district court that it was fair and reasonable. The district court thus did not abuse its discretion in limiting plaintiff's overbroad and onerous discovery demands.

Finally, we agree with the district court that the release signed by plaintiff was valid and enforceable and that her refusal to return the consideration paid for that release made her revocation attempt ineffective. As such, the release bars plaintiff's claims against FileNet making the grant of summary judgment required as a matter of law. We have examined the record and briefs with regard to appellants' remaining arguments and are satisfied that appellants have shown no basis for reversal of the district court's orders.

FileNet's motion to dismiss this appeal with prejudice because of plaintiff's failure to file an appeal bond is denied as moot. Considering the procedural posture of this case, that the major sanctions against Smith were before the en banc court at the time, and that the defalcations appear to be largely the fault of plaintiff's attorney Smith, defendant's motion for sanctions pursuant to Fed. R. App. P. 38 is denied. Smith is warned that further attempts by him to

relitigate these issues or other issues already determined and foreclosed by this court may result in sanctions. See In re Smith, 77 F.3d 493 (Table), No. 95-1119, 95-1091, 1996 WL 67191 (10th Cir. Feb. 16, 1996).

AFFIRMED.

Entered for the Court

James K. Logan
Circuit Judge

United States Court of Appeals
for the Tenth Circuit

GEANA J. DUNKIN,	)	[June 12, 1996]
Plaintiff,	)	
v.	)	No. 95-1087
	)	(D.C. No. 92-N-243)
	)	(D. Colo.)
LOUISIANA-PACIFIC CORPORATION; JAMES BELDIN; DOUGLAS EDDINS,	)	
Defendants-Appellees,	)	
DAVID L. SMITH,	)	
Attorney-Appellant.	)	

ORDER AND JUDGMENT[5]

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[5]This order and judgment is not binding precedent, except under the doctrine of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

Before Baldock, Holloway and Brorby, Circuit Judges

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34(a); 10th Cir. R. 34.1.9. The case is therefore ordered submitted without oral argument.

Attorney-appellant David L. Smith appeals sanction orders entered against him by the district court and that court's refusal to vacate those orders following the parties' settlement of the underlying lawsuit. Plaintiff-appellant Geana J. Dunkin argues that the district judge should have recused, that he interfered with the attorney-client relationship, and that he abused his discretion when he stayed her case pending the resolution of her attorney's disciplinary status.

We have reviewed the record in this case and the briefs of the parties. We find that the district court was well within its discretion in imposing sanctions against Mr. Smith. Mr. Smith's argument that previous appeals to this court were not frivolous has been foreclosed by previous panels of this court. See In re Smith, 10 F.3d 723, 724 (10th Cir. 1993), cert. denied, 115 S.Ct. 53 (1994). Ms. Dunkin's arguments regarding the district court's refusal to

recuse, its alleged interference with the attorney-client relationship, and its stay of her case became moot when the parties settled their underlying dispute.

Finally, the district court did not err in refusing to vacate the previously imposed sanctions. See U.S. Bancorp Mortgage Co. v. Bonner Mall Partnership, 115 S.Ct. 386, 393 (1994). This case does not present the exceptional circumstances which, in some instances, can support the vacatur of previous sanctions. See id.; see also Oklahoma Radio Assocs. v. FDIC, 3 F.3d 1436, 1444-45 (10th Cir. 1993).

The judgment of the United States Court for the District of Colorado is AFFIRMED.

Entered for the Court

Wade Brorby
Circuit Judge

United States Court of Appeals
for the Tenth Circuit

	)	[June 12, 1996]
KELLY J. DEHERRERA,	)	
	)	
Plaintiff,	)	
	)	
	)	
v.	)	No. 95-1110
	)	(D.C. No. 90-B-2260)
	)	(D. Colo.)
CITY AND COUNTY OF DENVER, W. THOMAS RICHARDS, CHARLES CHAPMAN,	)	
	)	
Defendants-Appellees,	)	
	)	
	)	
DAVID L. SMITH,	)	
	)	
Attorney-Appellant.	)	
	)	

ORDER AND JUDGMENT[6]

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[6]This order and judgment is not binding precedent, except under the doctrine of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

Before Baldock, Holloway and Brorby,
Circuit Judges

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34(a); 10th Cir. R. 34.1.9. The case is therefore ordered submitted without oral argument.

Attorney-appellant David L. Smith appeals from a sanction order entered against him by the district court and from that court's later order dismissing the case as per the parties' settlement agreement but refusing to vacate the previously-imposed sanction order.[7]

We have reviewed the record in this case and the briefs of the parties. We find that the district court was well within its discretion in imposing sanctions against Mr. Smith. Nor did the district court err in refusing to vacate the previously imposed sanctions. See U.S. Bancorp Mortgage Co. v. Bonner Mall Partnership, 115 S.Ct. 386, 393 (1994). This case does not present the exceptional circumstances which, in some instances, can support the vacatur of previous sanctions. See id.; see also Oklahoma Radio Assocs. v. FDIC, 3 F.3d 1436, 1444-45 (10th Cir. 1993).

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[7]Mr. Smith also argues that the district court abused its discretion in refusing to schedule his client's jury trial until October 26, 1994. Standing issues aside, this issue is mooted by the fact of the parties' settlement.

Appellees' request for costs and attorney fees on appeal is denied.

The judgment of the United States District Court for the District of Colorado is AFFIRMED.

Entered for the Court

Wade Brorby
Circuit Judge

IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

G. ANN SAATHOFF,	)	[June 18, 1996]
Plaintiff-Appellant,	)	
and,	)	
DAVID L. SMITH,	)	
Attorney-Appellant,	)	
v.	)	No. 95-1206
	)	(D.C. No. 93-B-2396)
FILENET CORPORATION,	)	(Dist. of Colo.)
Defendant-Appellee.	)	

PETITION FOR REHEARING AND
SUGGESTION FOR REHEARING EN BANC

G. Ann Saathoff and David L. Smith hereby file their petition for rehearing and suggestion for rehearing en banc:

I. PETITION FOR REHEARING

On June 4, 1996, a three-judge hearing panel of this Court (composed of Anderson, Logan, and Murphy, Circuit Judges) issued its (unpublished) Order and Judgment (copy attached hereto) affirming the orders issued by United States District Judge Lewis T. Babcock. The hearing panel said:

> . . . we agree with the district court that the release signed by

> plaintiff was valid and enforceable and that her refusal to return the consideration paid for that release made her revocation attempt ineffective. As such, the release bars plaintiff's claims against FileNet making the grant of summary judgment required as a matter of law.

(Order and Judgment at page 5.) However, this misapprehends the nature of the payment received by Ms. Saathoff. At the time Ms. Saathoff was terminated from her employment, she received final paychecks of $2350.52 and $1462.16.[8] In order to receive these paychecks, Ms. Saathoff was required to sign a release that could be cancelled or revoked by her within seven days.[9] Ms. Saathoff cancelled or revoked the release within the seven-day period permitted by the release.[10] However, Ms. Saathoff did not refuse to return any "consideration" paid for the release. The final paychecks Ms. Saathoff received at the time she was terminated from her employment were for work performed by her at FileNet. They were not "consideration" for the release she was required to sign in order to receive these final paychecks. Because Ms. Saathoff

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[8]R. Vol. II., Deborah Lee Pinney Deposition Exhibits 24 and 26, all pages and lines.

[9]R. Vol. II., Deborah Lee Pinney Deposition Exhibits 23, 24, 25, and 26, all pages and lines.

[10]R. Vol. II., Deborah Lee Pinney Deposition Exhibits 23 and 27, all pages and lines.

cancelled or revoked the release within the seven-day period permitted by the release, the release was invalid and was not enforceable, and her refusal to return the payment she received for work performed by her at FileNet did not make her revocation attempt ineffective. Therefore, the release did not bar Ms. Saathoff's claims against FileNet or require the grant of summary judgment as a matter of law.

The hearing panel said:

> With regard to the monetary sanctions imposed by the district court in the course of this case, we have reviewed the record and find no abuse of discretion. See Willner v. University of Kan., 848 F.2d 1023, 1030 (10th Cir. 1988)(upholding sanction of dismissal for failure to provide discovery), cert. denied, 488 U.S. 1031 (1989).

(Order and Judgment at page 3.) However, this ignores the following portion of the record:

> On or about January 17, 1995, Ms. Saathoff filed Plaintiff's Motion for Reconsideration of Rulings Made by United States Magistrate Judge O. Edward Schlatter on January 6, 1995 and January 10, 1995, arguing that these rulings are clearly erroneous and contrary to law under Fed. R. Civ. P. 72(a) and 28 U.S.C. § 636(b)(1)(a). (R. Vol. I., Doc. 55, all pages and lines.) In her simultaneously filed Motion for Sanctions, Ms. Saathoff argued that the certification of compliance with document requests 1, 4, 6, and 7 made by Mr. Freudenberger is false, and in violation of Fed. R. Civ. P. 11 and 26(g). (Id.)

On January 20, 1995, FileNet filed Defendant's Motion for Summary Judgment, arguing that Ms. Saathoff cannot set forth specific facts showing that there is a genuine issue for trial, as required by Fed. R. Civ. P. 56(e). (R. Vol. I., Doc. 56, all pages and lines.) FileNet also argued that Ms. Saathoff's lawsuit is barred by the release she signed when she was terminated from her employment, even though she revoked or cancelled the release within the seven-day period permitted by the release. (Id.)

. . .

On February 7, 1995, Ms. Saathoff filed her Brief in Opposition to Defendant's Motion for Summary Judgment, and Verified Request for Ruling on Plaintiff's Motion for Enlargement of Time to Complete Discovery and File Discovery Motions, arguing that on the basis of her affidavit, as well as the other evidentiary materials already on file or being filed with the Court, FileNet's argument that she cannot set forth specific facts showing that there is a genuine issue for trial, as required by Fed. R. Civ. P. 56(e), should be rejected, as should its argument that her lawsuit is barred by the release she signed when she was terminated from her employment. (R. Vol. II., all pages and lines.) Ms. Saathoff argued that since she has not had the opportunity to discover information that is essential to her opposition to FileNet's motion for summary judgment, summary judgment

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should be refused pending a ruling on her motion for enlargement of time to complete discovery and file discovery motions. (Id.) Ms. Saathoff advised Judge Babcock that additional time would permit her to obtain the documents being withheld by FileNet, and to retake the depositions of Deborah Lee Pinney and Michael LaCasella with respect to Michael Maziarz and all documents, and to take the deposition of John Clark. (Id.) Ms. Saathoff requested such other and further relief as the Court deemed appropriate, including reasonable expenses and attorney fees pursuant to Fed. R. Civ. P. 11, 26(g) and 37(a). (Id.)

On February 8, 1995, Judge Babcock issued his order denying Plaintiff's (January 17, 1995) Motion for Reconsideration of Rulings Made by United States Magistrate Judge O. Edward Schlatter on January 6, 1995 and January 10, 1995, and awarding Filenet "reasonable costs incurred in defending this motion as it relates to the protective order." (R. Vol. I., Doc. 70, all pages and lines.) Judge Babcock denied Ms. Saathoff's simultaneously filed motion for sanctions against Mr. Freudenberger for falsely certifying compliance with her document requests 1, 4, 6, and 7, in violation Fed. R. Civ. P. 11 and 26(g). (Id.)

In her (January 17, 1995) motion for reconsideration, Ms. Saathoff argued that it is inconceivable that the documents requested in document

requests 12 and 13 of Plaintiff's (First) Request for Production of Documents to Defendant are irrelevant to the subject matter of the pending action under the standard set forth in Fed. R. Civ. P. 26(b). ("It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.") (R. Vol. I., Doc. 55, at pages 10-11.) Since FileNet failed to show that the information sought by her was privileged, she was entitled to an order compelling discovery under Fed. R. Civ. P. 37(a). See Peat, Marwick, Mitchell & Co. v. West, 748 F.2d 540 (10th Cir. 1984), cert. dismissed, 469 U.S. 1199 (1985). Magistrate Judge Schlatter's (January 6, 1995) ruling was therefore "clearly erroneous" and "contrary to law" under Fed. R. Civ. P. 72 and 28 U.S.C. § 636. See Anderson v. City of Bessemer, 470 U.S. 564, 573, 105 S.Ct. 1504, 1511, 84 L.Ed.2d 518 (1985), quoting United States Gypsum Co., 333 U.S. 364, 395, 68 S.Ct. 525, 542, 92 L.Ed.2d 746 (1948).

In her (January 17, 1995) motion for reconsideration, Ms. Saathoff argued that requiring her to sign the burdensome and oppressive, and unconstitutionally overbroad, protective order proposed by Mr. Freudenberger to obtain the documents requested in document requests 5, 8, 9, 14, 15, 16, 17, and 18 of Plaintiff's (First) Request for Production of Documents to Defendant violates Fed. R. Civ. P. 26(b) and (c). (R. Vol. I.,

Doc. 55, at pages 11-12.) This is true even though Magistrate Judge Schlatter mistakenly found and concluded that the requested documents "are traditionally considered confidential, and therefore subject to a protective order"--a wholly improper basis or standard for denying discovery under Fed. R. Civ. P. 26(b), or for granting a protective order under Fed. R. Civ. P. 26(c). (Id.) Under these circumstances, Magistrate Judge Schlatter's (January 10, 1995) ruling was "clearly erroneous" and "contrary to law" under Fed. R. Civ. P. 72 and 28 U.S.C. § 636.

In order to preserve the foregoing issues for appeal to the United States Court of Appeals for the Tenth Circuit, it was necessary for Ms. Saathoff to file a motion for reconsideration of Magistrate Judge Schlatter's (January 6, 1995 and January 10, 1995) rulings to Judge Babcock. However, since Judge Babcock and/or the Tenth Circuit would need to review the documents inspected by Magistrate Judge Schlatter when he made his rulings, he made another ruling that was "clearly erroneous" and "contrary to law" under Fed. R. Civ. P. 72 and 28 U.S.C. § 636 by returning the documents to Mr. Freudenberger rather than retaining them in the case file.

For these reasons, Judge Babcock's (February 8, 1995) order rubber-stamping Magistrate Judge Schlatter's (January 6, 1995 and January 10, 1995) rulings is transparently invalid, as is his (February 8, 1995) order awarding Filenet "reasonable costs incurred in defending this motion as it relates to

the protective order," while denying Ms. Saathoff's simultaneously filed motion for sanctions against Mr. Freudenberger for falsely certifying compliance with her document requests 1, 4, 6, and 7, in violation Fed. R. Civ. P. 11 and 26(g). Judge Babcock therefore grossly abused his discretion or otherwise acted improperly or in a manner detrimental to the fair and impartial administration of justice by issuing his (February 8, 1995) order.

On March 8, 1995, Judge Babcock issued his order requiring Ms. Saathoff and Mr. Smith to "pay FileNet, no later than March 31, 1995, $2,040.00 as sanctions pursuant to Fed. R. Civ. P. 37." (R. Vol. I., Doc. 77, all pages and lines.) This order clarified Judge Babcock's (February 8, 1995) order denying Plaintiff's (January 17, 1995) Motion for Reconsideration of Rulings Made by United States Magistrate Judge O. Edward Schlatter on January 6, 1995 and January 10, 1995, and awarding Filenet "reasonable costs incurred in defending this motion as it relates to the protective order," while denying Ms. Saathoff's simultaneously filed motion for sanctions against Mr. Freudenberger for falsely certifying compliance with her document requests 1, 4, 6, and 7, in violation Fed. R. Civ. P. 11 and 26(g). (Id.)

As with his (February 8, 1995) order, Judge Babcock's (March 8, 1995) order is transparently invalid, as Magistrate Judge Schlatter's (January 6, 1995 and January 10, 1995) rulings were "clearly erroneous" and "contrary

to law" under Fed. R. Civ. P. 72(a) and 28 U.S.C. § 636, and as it was necessary for Ms. Saathoff to file a motion for reconsideration of these rulings to Judge Babcock in order to preserve them for appeal to the United States Court of Appeals for the Tenth Circuit. Judge Babcock's (March 8, 1995) order requiring Ms. Saathoff and Mr. Smith to "pay FileNet, no later than March 31, 1995, $2,040.00 as sanctions pursuant to Fed. R. Civ. P. 37" is also transparently invalid, as Judge Babcock is using harsh and unjustified sanctions as a means of depriving Ms. Saathoff of her First Amendment right to petition the government for a redress of grievances, and as a means of driving Mr. Smith out of federal civil rights practice--improper uses of sanctions under White. . . . Judge Babcock therefore grossly abused his discretion or otherwise acted improperly or in a manner detrimental to the fair and impartial administration of justice by issuing his (March 8, 1995) order.

On April 20, 1995, Judge Babcock issued his order granting Filenet's motion for summary judgment on all claims. (R. Vol. I., Doc. 79, all pages and lines.) However, on the basis of Ms. Saathoff's affidavit, as well as the other evidentiary materials on file with the Court, FileNet's argument that she cannot set forth specific facts showing that there is a genuine issue for trial, as required by Fed. R. Civ. P. 56(e), should be rejected, as should FileNet's argument that her lawsuit is barred by the

release she signed when she was terminated from her employment. (R. Vol. I., Docs. 27 and 28, Depositions of Deborah Lee Pinney and Michael LaCasella, all pages and lines; R. Vol. II., all pages and lines.) Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986); Celotex Corp. v. Catrett, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986); Adickes v. S.H. Kress & Co., 398 U.S. 144, 90 S.Ct. 1598, 26 L.Ed.2d 142 (1970). Since Ms. Saathoff has not had the opportunity to discover information that is essential to her opposition to FileNet's motion for summary judgment, summary judgment should be refused pending a ruling on her motion for enlargement of time to complete discovery and file discovery motions. See Anderson, supra, at 477 U.S. 250 n. 5, 106 S.Ct. 2511, 91 L.Ed.2d 213. Additional time will permit Ms. Saathoff to obtain the documents being withheld by FileNet, and to retake the depositions of Deborah Lee Pinney and Michael LaCasella with respect to Michael Maziarz and all documents, and to take the deposition of John Clark. Ms. Saathoff is entitled to such other and further relief as may be just under the circumstances, including reasonable expenses and attorney fees pursuant to Fed. R. Civ. P. 11, 26(g) and 37(a).

By issuing his (April 20, 1995) order, Judge Babcock arbitrarily and discriminatorily applied the summary judgment procedure to deprive Ms. Saathoff of her First Amendment right to petition the government for a redress of grievances and her Seventh

Amendment right to a jury trial. Judge Babcock therefore grossly abused his discretion or otherwise acted improperly or in a manner detrimental to the fair and impartial administration of justice.

. . .

On May 9, 1995, Chief Deputy Clerk Stephen P. Ehrlich held a hearing on FileNet's frivolous bill of costs, which requested costs of $12,114.12 to be taxed against Ms. Saathoff. (R. Vol. I., Doc. 82, all pages and lines.) Before the hearing, Mr. Smith submitted a copy of the District Court disciplinary panel's (February 10, 1995) disciplinary order, and requested a ruling on his status as attorney of record for Ms. Saathoff. Mr. Ehrlich denied this request, but telephoned Mr. Smith later in the day and advised him that the District Court disciplinary order had been presented to Judge Babcock, who had removed Mr. Smith as Ms. Saathoff's attorney. Mr. Ehrlich then taxed costs of $8,234.15 against Ms. Saathoff, and mailed a letter requiring motions to review taxation of costs to be filed within five days of May 9, 1995. (R. Vol. I., Doc. 82, page 1.) Judge Babcock then issued (on May 31, 1995) his order requiring Ms. Saathoff to "post a bond on appeal in the amount of $4,500.00 pursuant to F.R.A.P. 7," and ordered (on June 15, 1995) that the cost bond be posted by June 23, 1995.

Mr. Ehrlich taxed costs of $8,234.15, including witness fees of

$695.00 for Mr. LaCasella's and Ms. Pinney's round trip air fares from Costa Mesa, California to Denver, Colorado to testify on behalf of FileNet at its Rule 30(b)(6) deposition. However, as Mr. Smith argued at the hearing on FileNet's bill of costs, Mr. Freudenberger agreed to produce these witnesses to testify on behalf of FileNet without cost to Ms. Saathoff. Furthermore, Ms. Pinney and Mr. LaCasella failed, or refused, to produce the documents requested by Ms. Saathoff in her deposition notice; and were unable, or refused, to testify fully and completely with respect to these documents. Ms. Pinney and Mr. LaCasella were also unable, or refused, to testify fully and completely with respect to Ms. Saathoff's former immediate supervisor, Mr. Maziarz; and particularly, were unable, or refused, to testify fully and completely with respect to FileNet's reasons for terminating Mr. Maziarz from his employment after Ms. Saathoff reported his improper conduct toward her to his immediate supervisor, Mr. LaCasella. Mr. Ehrlich was therefore incorrect to tax witness fees of $695.00 (or witness fees of any amount) against Ms. Saathoff.

Mr. Ehrlich taxed costs incident to taking depositions of $7,410.35, which included FileNet's purchase of transcripts of the depositions of Mr. LaCasella, Ms. Pinney, Ms. Saathoff, Mr. Niziol, Mr. Brink, Mr. Beasley, and Ms. Saathoff's expert witness, Dr. Jane Lillydahl, as well as deposition exhibits and incidental expenses.

> However, as Mr. Smith argued at the hearing on FileNet's bill of costs, FileNet used only a very small portion of the deposition testimony of these deponents in support of its motion for summary judgment; and Ms. Saathoff should not be required to pay for portions of deposition testimony that were not used by FileNet, which failed to submit records showing the cost of the portions of deposition testimony used in support of its motion for summary judgment. See Ramos and White, supra. Mr. Ehrlich was therefore incorrect to tax costs incident to taking depositions of $7,410.35 (or costs incident to taking depositions of any amount) against Ms. Saathoff.

(Amended Opening Brief for G. Ann Saathoff and David L. Smith at pages 19-35.) This portion of the record shows that the monetary sanctions of $2,040.00 imposed against Ms. Saathoff and Mr. Smith, and the costs of $8,234.15 taxed against Ms. Saathoff were clear abuses-of-discretion.

The hearing panel said:

> The additional disciplinary actions taken against Smith have been reaffirmed by this court in In re Smith, 76 F.3d 335, 336 (10th Cir. 1996), which effectively disposes of his arguments in that regard.

(Order and Judgment at page 3.) However, Ms. Saathoff and Mr. Smith have been deprived of a full and fair opportunity to litigate the following issues: (1) Whether by removing Mr. Smith as Ms. Saathoff's attorney and requiring her to post a cost

bond of $4,500.00 by June 23, 1995, Judge Babcock gave effect to D.C.COLO.LR 83.6P., a local rule which is unconstitutional on its face, and as applied to Mr. Smith in the District Court disciplinary action, and to Mr. Smith and his clients in pending and potential civil rights litigation, including Saathoff; (2) Whether Judge Babcock gave effect to this unconstitutional local rule even though the procedure followed by the Tenth Circuit disciplinary panel was so lacking in notice or opportunity to be heard that it denied due process; (3) Whether Judge Babcock gave effect to this unconstitutional local rule even though imposition of the same discipline against Mr. Smith as that imposed against him by the Tenth Circuit disciplinary panel has resulted in grave injustice; (4) Whether Judge Babcock gave effect to this unconstitutional local rule even though the kind of misconduct (if any) established against Mr. Smith has been held by the District Court to warrant substantially less severe discipline; (5) Whether Judge Babcock gave effect to this unconstitutional local rule even though Mr. Smith's attorney, Mr. Figa, refused to represent him competently in connection with the Tenth Circuit and District Court disciplinary actions. (Amended Opening Brief for G. Ann Saathoff and David L. Smith at pages 35-49.)

The hearing panel said:

> Considering the procedural posture of this case, that the major sanctions against Smith were before the en banc court at the time, and that the defalcations appear to be largely the fault of plaintiff's attorney Smith, defendant's motion for sanctions

> pursuant to Fed. R. App. P. 38 is denied. Smith is warned that further attempts by him to relitigate these issues or other issues already determined and foreclosed by this court may result in sanctions. See In re Smith, 77 F.3d 493 (Table), No. 95-1119, 95-1091, 1996 WL 67191 (10th Cir. Feb. 16, 1996).

However, this unsubstantiated attack on Mr. Smith, on his First Amendment right to access to the courts, and on Ms. Saathoff's First and Fifth Amendment right to the assistance of counsel to petition the government for a redress of grievances constitutes judicial misconduct pursuant to 28 U.S.C. § 372(c), for which they request Chief Judge Stephanie K. Seymour to take appropriate action.

II. SUGGESTION FOR REHEARING EN BANC

I express a belief based on a reasoned and studied professional judgment that the panel decision is contrary to the following decisions of the Supreme Court or of the United States Court of Appeals for the Tenth Circuit, and consideration by the full court is necessary to secure and maintain uniformity of decisions in this court: Willner v. University of Kan., 848 F.2d 1023 (10th Cir. 1988), cert. denied, 488 U.S. 1031 (1989); Peat, Marwick, Mitchell & Co. v. West, 748 F.2d 540 (10th Cir. 1984), cert. dismissed, 469 U.S. 1199 (1985); Anderson v. City of Bessemer, 470 U.S. 564, 105 S.Ct. 1504, 84 L.Ed.2d 518 (1985); United States Gypsum Co., 333 U.S. 364, 68 S.Ct. 525, 92 L.Ed.2d 746 (1948); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986); Celotex

Corp. v. Catrett, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986); Adickes v. S.H. Kress & Co., 398 U.S. 144, 90 S.Ct. 1598, 26 L.Ed.2d 142 (1970); Ramos v. Lamm, 713 F.2d 546 (10th Cir. 1983); White v. General Motors Corp., Inc., 908 F.2d 675 (10th Cir. 1990); In re Smith, 76 F.3d 335 (10th Cir. 1996); In re Smith, 77 F.3d 493 (Table), No. 95-1119, 95-1091, 1996 WL 67191 (10th Cir. Feb. 16, 1996).

I express a belief based on a reasoned and studied professional judgment that this appeal involves one or more questions of exceptional importance: (1) Whether the release signed by Ms. Saathoff barred her claims against FileNet or required the grant of summary judgment as a matter of law; (2) Whether the monetary sanctions of $2,040.00 imposed against Ms. Saathoff and Mr. Smith, and the costs of $8,234.155 taxed against Ms. Saathoff were abuses-of-discretion; (3) Whether Ms. Saathoff and Mr. Smith were deprived of a full and fair opportunity to litigate the issues relating to the disciplinary actions taken against him; (4) Whether the unsubstantiated attack on Mr. Smith, on his First Amendment right to access to the courts, and on Ms. Saathoff's First and Fifth Amendment right to the assistance of counsel to petition the government for a redress of grievances constitutes judicial misconduct pursuant to 28 U.S.C. § 372(c), for which appropriate action should be taken.

Dated this 18th day of June, 1996.

Respectfully submitted,

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David L. Smith
Attorney-Appellant
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CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of June, 1996, true and correct copies of the foregoing Petition for Rehearing and Suggestion for Rehearing En Banc were placed in the United States mail, postage prepaid, addressed as follows:

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United States Court of Appeals
for the Tenth Circuit

JAMES EDWARD QUALLS,	)	[July 23, 1996]
Plaintiff-Appellant,	)	
v.	)	Nos. 95-1385 95-1459 95-1489
REGIONAL TRANSPORTATION DISTRICT,	)	(D.C. No. 91-Z-989) (D. Colorado)
Defendant-Appellee,	)	
DAVID L. SMITH,	)	
Attorney-Appellant.	)	

ORDER AND JUDGMENT[1]

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[1]This order and judgment is not binding precedent, except under the doctrine of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

Before Brorby, Ebel and Henry,
Circuit Judges

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34(a); 10th Cir. R. 34.1.9. The case is therefore ordered submitted without oral argument.

Plaintiff James Edward Qualls and his attorney David L. Smith brought four appeals, Nos. 95-1246, 95-1385, 95-1459, and 95-1489, asserting the district court committed a litany of errors in Qualls v. Regional Transp. Dist., D. Colo. No. 91-Z-989. We have summarized Mr. Smith's history of misconduct before the United States District Court for the District of Colorado, the Tenth Circuit, and the United States Supreme Court in Howard v. Mail-Well Envelope Co., 10th Cir. No. 95-1428, and we need not repeat that summary here. A Tenth Circuit jurisdictional panel has (1) dismissed appeal No. 95-1246; (2) dismissed all of Mr. Smith's contentions in appeal No. 95-1385 except his challenge to the district court's order imposing sanctions on him; (3) consolidated appeal Nos. 95-1385, 95-1459, and 95-1489. Qualls v. Regional Transp. Dist., Nos. 95-1246, 95-1385, 95-1459, & 95-1489 (10th Cir. Apr. 12, 1996). Because Mr. Qualls has settled his case on the district court level and voluntarily dismissed his appeals, we conclude all of Mr. Smith's contentions on appeal are moot except his challenge to the district court's May 15, 1995, order terminating his representation of Mr. Qualls in light of the fact a disciplinary panel had suspended him from

practicing law before the United States District Court for the District of Colorado and his challenge to the many district court orders imposing sanctions against Mr. Smith personally.

We have recently exercised jurisdiction over an attorney's appeal from a district court's order disqualifying her from representing a party, even though she brought her appeal after the parties had dismissed the underlying case with prejudice pursuant to a settlement agreement, Johnson v. Board of County Comm'rs, 85 F.3d 489, 492 (10th Cir. 1996), and we see no reason to apply a different rule when, as in this case, the attorney-appellant challenges a sanction award assessed against him personally. Accordingly, provided Mr. Smith filed a timely notice of appeal after the entry of final judgment, we conclude we have the authority to review the merits of his appeal from the disqualification and sanctions orders.

On October 10, 1995, the district court entered its order dismissing the case with prejudice pursuant to the settlement agreement between Mr. Qualls and the Regional Transportation District. Mr. Smith subsequently filed a timely notice of appeal--in fact, he filed several. We therefore conclude we have jurisdiction to review the disqualification and sanctions orders. Having done so, we find no error and affirm for substantially the same reasons stated by the district court.

The disqualification and sanction orders challenged in appeals No. 95-1385, 95-1459, and 95-1489 are AFFIRMED, and the

remaining contentions in those appeals are DISMISSED. The petitions for writ of mandamus or prohibition in Nos. 95-1385, 95-1459, and 95-1489 are DENIED.

Entered for the Court

Wade Brorby
United States Circuit
Judge

PUBLISH

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

LINDA C. HOWARD,	)	[July 23, 1996]
Plaintiff-Appellant,	)	
v.	)	No. 95-1428
MAIL-WELL ENVELOPE COMPANY, BUTLER PAPER COMPANY, GEORGIA-PACIFIC CORPORATION GREAT NORTHERN NEKOOSA CORPORATION EMPLOYEE PROTECTION PLAN,	)	
Defendants-Appellees,	)	
DAVID L. SMITH,	)	
Attorney-Appellant.	)	

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO
(D.C. No. 93-D-1895)

Submitted on the briefs:[12]

Linda C. Howard, pro se for Plaintiff-Appellant and David L. Smith, pro se, Denver, Colorado, for Attorney-Appellant.

Jeffrey T. Johnson, Brian M. Mumaugh of Holland & Hart, Denver, Colorado, for Defendants-Appellees Mail-Well Envelope Company, Butler Paper Company, and Georgia-Pacific Corporation and Attorneys for Defendant-Appellee Great Northern Nekoosa Employee Protection Plan; Randall A. Constantine and Amy L. Lloyd of Elrod and Thompson, Atlanta, Georgia, for Defendant-Appellee Great Northern Nekoosa Corporation Employee Protection Plan.

Before ANDERSON, BRORBY AND HENRY, Circuit Judges

BRORBY, Circuit Judge.

Attorney David L. Smith brings this interlocutory appeal challenging the district court's order awarding appellees $8,640.00 in sanctions. For the reasons stated, we dismiss for lack of jurisdiction.

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[12]After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34(a); 10th Cir. R. 34.1.9. The case is therefore ordered submitted without oral argument.

I

This case is but the latest chapter of the continuing saga of attorney David L. Smith. In 1993, we issued an order to show cause why Mr. Smith should not be fined, disbarred, or otherwise disciplined for filing frivolous appeals. In re Smith, 10 F.3d 723, 724 (10th Cir. 1993)(per curiam), cert. denied, 115 S.Ct. 53 (1994). During oral argument on the order to show cause, Mr. Smith admitted he had not paid any of the sanctions previously imposed on him by this court and by the district court. Id. We therefore suspended him from the practice of law before the Tenth Circuit until and unless he demonstrated he had paid all of the sanctions levied against him. Id. In December 1995, we issued a second order to show cause why Mr. Smith should not be disbarred for violating this court's 1993 suspension order by drafting briefs on behalf of allegedly pro se appellants in at least four cases: Qualls v. Regional Transportation Dist., No. 94-1127; Dunkin v. Louisiana-Pacific Corp., No. 94-1130; Howard v. Mail-Well Envelope Co., No. 94-1317; and Seales v. Jefferson County Sch. Dist. R-1, No. 95-1198. In re Smith, 76 F.3d 335 (10th Cir. 1996)(per curiam). Mr. Smith admitted he had written and submitted the briefs in question. Id. at 336. We therefore ordered Mr. Smith's name be stricken from the list of attorneys allowed to practice before the Tenth Circuit. Id. The United States Supreme Court has also disbarred Mr. Smith. In re Disbarment of David L. Smith, ____ U.S. ____, 116 S.Ct. 510 (1995).

After we initially suspended Mr. Smith from practicing before this court in 1993, see In re Smith, 10 F.3d 723, the Committee

on Conduct of the United States District Court for the District of Colorado took up the question of whether Mr. Smith should also be suspended from practicing before that court. Pending final action by the Committee on Conduct, the district court stayed all proceedings in this case. See Howard v. Mail-Well Envelope Co. 164 F.R.D. 524, 525 (D. Colo. 1996). Both Ms. Howard and Mr. Smith appealed the stay order, but we dismissed their appeal for lack of jurisdiction. Howard v. Mail-Well Envelope Co., No. 94-1317 (10th Cir. Nov. 15, 1994); see Howard, 164 F.R.D. at 525. In our order, we referred appellees' motion for sanctions on appeal to a Tenth Circuit disciplinary panel. Id. The disciplinary panel granted appellees' motion, awarded double costs and attorney fees, and remanded the case to the district court to determine the amount of attorney fees to be awarded. Howard v. Mail-Well Envelope Co., No. 94-1317 (10th Cir. July 18, 1995). By an order dated September 7, 1995, the district court concluded $8,640.00 in attorney fees should be awarded to the appellees, to be paid exclusively by Mr. Smith. The district court also advised Ms. Howard that Mr. Smith had been suspended from practicing law before the United States District Court for the District of Colorado, see In re Smith, No. 95-1119, 1996 WL 67191 (10th Cir. Feb. 16, 1996) (affirming district court disciplinary panel's suspension order); Howard, 164 F.R.D. at 525 (noting Mr. Smith's disciplinary status has been resolved and that he is no longer authorized to practice in the United States District Court for the District of Colorado); that the district court would no longer accept documents signed by Mr. Smith; that she should seek new counsel; and that until she

hired an attorney she would be considered to be a pro se litigant.

Both Mr. Smith and Ms. Howard appealed the September 7, 1995 order asserting a litany of errors. A jurisdictional panel of this court dismissed Ms. Howard's claims, leaving Mr. Smith as the sole appellant. Howard v. Mail-Well Envelope Co., No. 95-1428 (10th Cir. Feb. 26, 1996). The jurisdictional panel also dismissed Mr. Smith's challenge to the district court's decision to terminate his representation of Ms. Howard and to no longer accept filings signed by Mr. Smith. Id.; see Richardson-Merrell, Inc. v. Koller, 472 U.S. 424 (1985)(order disqualifying counsel in a civil case is not immediately appealable); United States v. Dickstein, 971 F.2d 446 (10th Cir. 1992)(revocation of permission to appear pro hac vice in a criminal case is not immediately appealable). In addition, to the extent Mr. Smith challenges the propriety of the Tenth Circuit disciplinary panel's award of double costs and attorney fees as sanctions for filing a frivolous appeal, see Howard v. Mail-Well Envelope Co., No. 94-1317 (10th Cir. July 18, 1995), we are without power to grant relief. See In re Smith, 10 F.3d at 724 (a three-judge panel cannot overrule the prior decision of another three-judge panel of this court). Accordingly, the only issue properly before this panel is whether the district court's calculation of the appropriate dollar amount of sanctions in the September 7, 1995, order amounted to reversible error.

II

As a threshold matter, we must determine whether we have jurisdiction over

this appeal in light of the fact that Ms. Howard's case is still pending in district court. In G.J.B. & Associates, Inc. v. Singleton, 913 F.2d 824, 827 (10th Cir. 1990), we "join[ed] the majority of circuit courts that have addressed the issue and [held] that a sanction order against an attorney currently of record is not a final decision for purposes of a § 1291 appeal where the underlying controversy remains unresolved." We also held such an order is not appealable under the collateral-order doctrine of Cohen v. Beneficial Indus. Loan Corp., 337 U.S. 541 (1949), G.J.B. & Assoc., 913 F.2d at 827-29, which the Supreme Court has recently explained "is best understood not as an exception to the 'final decision' rule laid down by Congress in § 1291, but as a 'practical construction' of it." Digital Equip. Corp. v. Desktop Direct, Inc., ____ U.S. _____, _____, 114 S.Ct. 1992, 1995 (1994)(citations omitted); Stubblefield v. Windsor Capital Group, 74 F.3d 990, 997 (10th Cir. 1996). The crux of our decision regarding the collateral-order doctrine was that the attorney may challenge the sanction order as part of an appeal from the final judgment, even if the parties settle or decline to appeal, and therefore it is not effectively unreviewable absent an interlocutory appeal. See G.J.B. & Assocs., 913 F.2d at 829 ("We reject any notion that an attorney risks losing the right to appeal if the parties settle or elect not to appeal from the final judgment"); see also Uselton v. Commercial Lovelace Motor Freight, Inc., 9 F.3d 849, 854 (10th Cir. 1993) (attorneys have standing to appeal orders issued directly against them, but lack standing to appeal orders applicable only to their clients). Similarly, in Dickstein, 971 F.2d 448, we held an order revoking defense

attorney Jeffrey A. Dickstein's permission to appear pro hac vice due to improper conduct was not immediately appealable, because it did not amount to a "final decision[] of the district court[]" within the meaning of 28 U.S.C. § 1291. Id. at 448. Further, as in G.J.B. & Associates, we held the challenged order was not appealable under the collateral-order doctrine because it was not effectively unreviewable through an appeal from a final judgment in the underlying case. Id. at 451. We explained that the only right defense counsel sought to vindicate in his interlocutory appeal was his reputation, which could be just as effectively rehabilitated through an appeal from a final judgment as through an interlocutory appeal, and that he did not seek to vindicate his asserted interest in continuing to represent the defendant throughout the remainder of the proceedings in the district court. Id. Most recently, in Johnson v. Board of County Comm'rs, 85 F.3d 489 (10th Cir. 1996), we exercised jurisdiction over an appeal from an order disqualifying the attorney-appellant from representing one of the parties, even though the underlying controversy had been dismissed with prejudice pursuant to a settlement agreement. We explained our cases "establish that settlement of an underlying case does not preclude appellate review of an order disqualifying an attorney from further representation insofar as that order rests on grounds that could harm his or her professional reputation.

We have no difficulty concluding the order challenged in this case does not amount to a "final decision[] of the district[] court" within the meaning of 28 U.S.C. § 1291. See Stubblefield, 74 F.3d at

995-96 (a "final decision of the district court . . . 'ends the litigation on the merits and leaves nothing more for the court to do but execute the judgment'")(quoting Digital Equip., ____ U.S. ____, 114 S.Ct. at 1995 (citation and internal quotation marks omitted)).

Furthermore, in light of our decisions in G.J.B. & Associates, Dickstein, and Johnson, we also conclude we lack jurisdiction over Mr. Smith's interlocutory challenge to the district court's decision under the collateral-order doctrine for three reasons: First and foremost, we see no meaningful distinction between Mr. Smith's position and that of Mr. Dickstein. As in Dickstein, Mr. Smith no longer represents a party in the litigation, but faces the stigma of a ruling that reflects negatively on his competence and conduct. However, as was also the case in Dickstein, the decision Mr. Smith now challenges may be effectively reviewed in an appeal from a final judgment, even if the parties settle their dispute or otherwise elect not to appeal.

Second, we disagree with the rationales underlying the decisions of the Third, Fifth and Seventh Circuits holding a sanction order against an attorney who no longer represents a party in the litigation is appealable under the collateral-order doctrine. See Markwell v. County of Bexar, 878 F.2d 899 (5th Cir. 1989); Eavenson, Auchmuty & Greenwald v. Holtzman, 775 F.2d 535, 537-39 (3d Cir. 1985); Knorr Brake Corp. v. Harbil, Inc., 738 F.2d 223, 225-26 (7th Cir. 1984). The central thesis of these decisions is that attorneys who no

longer represent parties in a case may be unable to challenge a sanction order by filing an appeal after a final judgment is entered for two reasons: first, their former clients might settle or elect not to appeal; and second, the attorney might not be notified that a final judgment has been entered given that he no longer actively participates in the litigation. Regarding the first rationale, our decisions in G.J.B. & Associates, Dickstein and Johnson make it clear an attorney may appeal a sanction or disqualification order even if his former client settles or does not appeal. Regarding the second rationale, we believe our sister circuits' analyses improperly blur the line between the impossibility of effective review necessary under the Cohen doctrine and mere inconvenience of monitoring the former client's case and performing the other tasks necessary to perfect an appeal.

Third, our cases make it clear the mere fact the sanction order in this case is currently due in full does not give rise to the type of irreparable harm justifying review under the collateral-order doctrine. In declining to adopt a blanket rule that all sanctions are immediately appealable under Cohen, this court has held, in a unanimous en banc decision, that "[a]ttorneys and parties [must] be fully aware that they must bear the burden of sanctions to the conclusion of the case and appeal on the merits of the fully adjudicated case." D&H Marketers, Inc. v. Freedom Oil & Gas, Inc., 744 F.2d 1443, 1446 (10th Cir. 1984)(en banc). We see no reason to create an exception to this general rule and allow attorneys who no longer represent a party in the underlying case an immediate

opportunity to relieve themselves of the consequences of their misconduct merely because those consequences are monetary, nor could such a holding be reconciled with our decision in G.J.B. & Assocs. We also see no reason to permit an immediate appeal under Cohen so that Mr. Smith can, without delay, attempt to somehow rehabilitate his reputation by persuading us to set aside the district court's decision. Mr. Smith's interest in promptly diminishing the stigma associated with the district court's decision is no greater than Mr. Dickstein's.

Finally, we see no basis for jurisdiction under 28 U.S.C. § 1292(a), because the challenged decision is not an injunction, or under the All Writs Statute, 28 U.S.C. § 1651, because Mr. Smith may secure adequate review through an appeal from the final judgment in the underlying case and because he has otherwise failed to make the showing required to obtain a remedy under that statute. See McNeil v. Guthrie, 945 F.2d 1163, 1165 (10th Cir. 1991)("In order to be entitled to mandamus relief, a petitioner must show a clear abuse of discretion or conduct which arbitrarily assumes and exercises authority contrary to that of the judiciary . . . Additionally, because mandamus is an extraordinary remedy, a petitioner must also show that he lacks an alternative for the relief he seeks and that his right to the writ is not in dispute"); Appeal of Licht & Semonoff, 796 F.2d 564, 573 (1st Cir. 1986)(writ of mandamus will not lie because sanction order may be reviewed on appeal from final judgment). Furthermore, the district court has not taken the steps necessary to invoke our A-20 jurisdiction under 28 U.S.C. § 1292(b). Finally, even if we assume for the sake of

discussion we would have jurisdiction if the district court had made an express finding there was "no just reason for delay" and directed entry of judgment against Mr. Smith pursuant to Fed. R. Civ. P. 54(b), which we consider to be a very great assumption indeed, the district court made no such express finding in this case.

Appeal DISMISSED. Petition for writ of mandamus or prohibition DENIED.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Edward W. Nottingham

Civil Action No. 92 N 243

GEANA J. DUNKIN,

Plaintiff,

v.

LOUISIANA-PACIFIC CORPORATION, JAMES BELDIN, and DOUGLAS EDDINS,

Defendants.

ORDER

This matter is before the court on the mandate of the United States Court of Appeals for the Tenth Circuit, filed in this court on August 19, 1996. The court of appeals affirmed this court's imposition of sanctions upon Attorney David L. Smith. In order to establish a date certain for payment of the sanctions, it is

ORDERED that Mr. Smith shall pay the sanctions imposed in this case within ten days of the date of this ORDER.

Dated this 19th day of August, 1996.

BY THE COURT:

EDWARD W. NOTTINGHAM
United States District Judge

CERTIFICATE OF MAILING

I hereby certify that a copy of the Order signed by Judge Edward W. Nottingham on August 19, 1996, was mailed to the following on August 20, 1996:

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Magistrate Judge Bruce D. Pringle

JAMES R. MANSPEAKER, CLERK

By_____
Deputy Clerk

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

G. ANN SAATHOFF,	)	[September 4, 1996]
	)	
Plaintiff-Appellant,	)	
	)	
v.	)	No. 95-1206
	)	
FILENET CORPORATION,	)	
	)	
Defendant-Appellee.	)	
	)	
----------	)	
	)	
DAVID L. SMITH,	)	
	)	
Attorney-Appellant.	)	
	)	

ORDER
September 4, 1996

Before ANDERSON, LOGAN, and MURPHY, Circuit Judges

This matter comes on for consideration of appellants' petition for rehearing and suggestion for rehearing in banc.

Upon consideration whereof, the petition for rehearing is denied by the panel that rendered the decision.

In accordance with Rule 35(b), Federal Rules of Appellate Procedure, the suggestion for rehearing in banc was transmitted to all of the judges of the court who are in

regular active service. No member of the panel and no judge in regular active service on the court having requested that the court be polled on rehearing in banc, Rule 35, Federal Rules of Appellate Procedure, the suggestion for rehearing in banc is denied.

Entered for the Court

PATRICK FISHER, Clerk

By:_____
Deputy Clerk